

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

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RECORDATION NO

FILED 1423

December 27, 1989

DEC 28 1989 -8 50 AM

INTERSTATE COMMERCE COMMISSION

9-362A004

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two original copies of a Sale and Assignment Agreement dated as of December 26, 1989, a secondary document as defined in the Commission's Rules for the Recordation of Documents, 49 C.F.R. Section 1177.

The enclosed document relates to a Security Agreement dated as of July 27, 1988 between ACF Industries, Incorporated and Equitable Lomas Leasing Corporation (now ELLCO Leasing Corporation) which was filed and recorded on July 28, 1989 under Recordation Number 15758.

The names and addresses of the parties to the enclosed document are:

Assignor: ELLCO Leasing Corporation
(formerly Equitable Lomas Leasing Corporation)
10251 Vista Sorrento Parkway
San Diego, CA 92121

Assignee: Pitney Bowes Credit Corporaiton
535 Anton Boulevard, Suite 950
Costa Mesa, CA 92626

A description of the railcars covered by the enclosed document is set forth as an exhibit to the above referenced Security Agreement.

Also enclosed is a check in the amount of \$15 payable to the order of the Interstate Commerce Commission covering the required recordations.

15758-A

\$ 15

Copy by [unclear] CT. Kappler

Ms. Noreta R. McGee
December 27, 1989
Page 2

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Suite 200, Washington, D.C. 20006.

A short summary of the enclosed secondary document to appear in the Commission's Index is:

Sale and Assignment and Agreement dated as of December 26, 1989 from ELLCO Leasing Corporation to Pitney Bowes Credit Corporation covering 245 tank and covered hopper cars.

Very truly yours,


Charles T. Kappler

CTK/skh
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

12/28/89

OFFICE OF THE SECRETARY

Charles T. Kappler
Alvord & Alvord
918 16th St. N.W.
Washington, D.C. 20423

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/28/89 at 8:50am , and assigned recordation number(s). 15758-A

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

DEC 28 1989 -8 50 AM

INTERSTATE COMMERCE COMMISSION

SALE AND ASSIGNMENT AGREEMENT

This Sale and Assignment Agreement ("Agreement") is entered into by ELLCO Leasing Corporation (f/k/a/ Equitable Lomas Leasing Corporation) ("ELLCO") and Pitney Bowes Credit Corporation ("PBCC") with respect to that certain Promissory Note dated as of July 28, 1988, Term Loan Agreement and Security Agreement each dated as of July 27, 1988 by and between ACF Industries, Incorporated ("ACF") as borrower and ELLCO as lender, and all other other financing statements, documents or agreements relating thereto (collectively, "Loan Documents").

FOR VALUE RECEIVED, ELLCO hereby sells, assigns, transfers and sets over to PBCC, and PBCC for itself, its successors and assigns hereby accepts, without recourse, the Loan Documents, together with all of ELLCO's right, title and interest in the collateral property covered by and described in the Loan Documents, all insurance provided by third parties relating to such property, and all of ELLCO's rights and remedies under any of the Loan Documents with respect to the collateral property and guaranties or endorsements, including the right to collect any and all obligations due and to become due under the Loan Documents, and to take, in ELLCO'S or PBCC'S name, any and all proceedings ELLCO might otherwise take.

ELLCO warrants that: the Loan Documents, including without limitation the Promissory Note, Term Loan Agreement and Security Agreement are true, valid and genuine and represent existing valid and enforceable obligations in accordance with their terms; the present unpaid balance owing to ELLCO by ACF under the Loan Documents is \$ 9,041,199.00; all signatures, names, addresses, amounts and other statements and facts done by or made by ELLCO which are contained in the Loan Documents are true and correct; to the best of ELLCO's knowledge all signatures, names, addresses, amounts and other statements and facts done by or made by parties other than ELLCO which are contained in the Loan Documents are true and correct; the Loan Documents (including their form and substance and the computation of all charges) and the transaction underlying the obligation conforms to all applicable laws, rules, regulations, ordinances and orders; the equipment described in the Loan Documents has been delivered to ACF pursuant to the terms of the Loan Documents in satisfactory condition and has been accepted by ACF; the Loan Documents are not and will not at any time be subject to any defense, claim, counterclaim or set-off on account of any act or failure to act by ELLCO before the execution hereof and ELLCO has complied with all its obligations under the Loan Documents; the Loan Documents, as applicable, constitute a perfected first priority security interest or lien upon the property covered thereby, effective against all persons and any filing, recordation or other action or procedure permitted or required by law to perfect such security interest or lien has been accomplished; the Loan Documents, including any guaranty in connection therewith, are and will be legally enforceable

according to their terms by PBCC as the assignee thereof in the state(s) where ACF and the property are located; ELLCO has the right to sell and assign the Loan Documents and this sale and assignment conveys good title to the Loan Documents free and clear of all other liens and encumbrances whatsoever.

If PBCC reasonably determines that ELLCO has breached any of its warranties with respect to the Loan Documents, ELLCO will, upon PBCC's request, promptly repurchase the Loan Documents for an amount equal to the unpaid balance thereon, including accrued interest plus any expenses of collection, repossession, transportation and storage incurred by PBCC, including attorneys' fees and costs, which have not then been paid by or on behalf of ACF. Upon such payment by ELLCO, PBCC shall reassign the Loan Documents to ELLCO without recourse to or warranty by PBCC.

ELLCO agrees that PBCC may in ELLCO's name sign and endorse any remittances received pursuant to the Loan Documents. ELLCO waives notice of acceptance hereof and waives all set-offs and counterclaims against PBCC except as may be provided in any participation agreement that may subsequently be entered into between PBCC and ELLCO ("Participation Agreement"). Except as otherwise may be provided in a Participation Agreement, PBCC may at any time without the consent of ELLCO, without notice to ELLCO and without affecting or impairing the obligations of ELLCO hereunder, do any of the following:

- (a) Renew, extend, modify, release or discharge any obligation of ACF or any persons obligated on the Loan Documents;
- (b) Accept partial payments of Loan Document obligations;
- (c) Accept new or additional documents, instruments or agreements relating to or in substitution of the Loan Document obligations;
- (d) Settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the Loan Document obligations and the collateral security therefore in any manner;
- (e) Consent to the transfer or return of collateral security and take and hold additional collateral security or guaranties for the Loan Document obligations;
- (f) Amend, exchange, release or waive any collateral security or guaranty; or
- (g) Bid and purchase at any sale of the Loan Documents or collateral security and apply any proceeds and collateral security and direct the order and manner of sale.

ELLCO shall have no authority to, and will not, without PBCC's prior written consent, accept collections, repossess or consent to the return of the collateral security described in the Loan Documents or modify the terms thereof. PBCC's knowledge at any time of any breach of or non-compliance with any of the foregoing shall not constitute any waiver by PBCC.

If any action is taken to enforce the terms of this Agreement, costs and expenses, including reasonable attorneys' fees, shall be awarded to the prevailing party. This agreement shall be interpreted and governed by the laws of California.

PBCC hereby represents and warrants that it is acquiring the Loan Documents for investment for its own account its successor or assigns, excepting only a participation by ELLCO, and not with a view to public distribution.

Dated: Dec 12-26, 1989

ELLCO LEASING CORPORATION

By: Stephen W. Smith
Printed Name: Stephen W. Smith
Title: Vice President

PITNEY BOWES CREDIT CORPORATION

By: John K. Fitzpatrick
Printed Name: JOHN K FITZPATRICK
Title: REGION VICE PRESIDENT

FORM OF CORPORATE ACKNOWLEDGEMENT

STATE OF CALIFORNIA

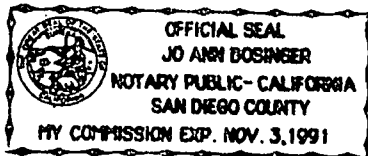
SS.:

COUNTY OF SAN DIEGO

On this 21st day of December, 1989, before me, personally appeared John K. Fitzpatrick to me personally known, who being by me duly sworn, says that he resides at 24871 El Cortijo Lane Mission Viejo, CA 92691 and is Region Vice President of Pitney Bowes Credit Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors as of December 26, 1989, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jo Ann Bosinger
Notary Public

(SEAL)



STATE OF CALIFORNIA

SS.:

COUNTY OF SAN DIEGO

On this 21st day of December, 1989, before me, personally appeared Stephen W. Smith to me personally known, who being by me duly sworn, says that he resides at 1222 Newlands Vista Way, La Jolla, CA 92037 and is Vice President of ELLCO Leasing Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors as of December 26, 1989, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jo Ann Bosinger
Notary Public

(SEAL)

